FILED
MAY 14 1941

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 800

NORMAN B. FROST AND FREDERIC N. TOWERS, two of the Executors of and Trustees under the Will of Mary H. Lincoln, deceased; UNITED STATES TRUST COMPANY OF NEW YORK, Ancillary Executor of the Will of Mary Lincoln Isham, deceased; JESSIE LINCOLN RANDOLPH, LINCOLN ISHAM, MARY LINCOLN BECKWITH AND ROBERT LINCOLN BECKWITH, *Petitioners*,

v.

AMERICAN SECURITY AND TRUST COMPANY, as Remaining Executor of and Trustee under the Will of Mary H. Lincoln, deceased; THE AMERICAN NATIONAL RED CROSS, a Body Corporate; FIRST CHURCH OF CHRIST SCIENTIST, a Body Corporate, and IOWA WESLEYAN COLLEGE, a Body Corporate, *Respondents*.

BRIEF OF THE AMERICAN SECURITY AND TRUST COMPANY, AS REMAINING EXECUTOR, ETC., IN OPPOSITION.

FREDERIC D. McKENNEY,
JOHN S. FLANNERY,
G. BOWDOIN CRAIGHILL,
JOHN E. LARSON,
901 Hibbs Building,
Attorneys for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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THE FACTS.

The facts, which are undisputed, are clearly and succinctly stated in the majority opinion of the Court of Appeals of the District of Columbia (pp. 1-2) and, therefore, in the interest of brevity, it is deemed unnecessary to restate them in this brief.

QUESTIONS PRESENTED.

The sole question before the Court of Appeals of the District of Columbia was whether, *under a proper construction of the will* of Mary H. Lincoln, deceased, a stock dividend of 500 shares of the common stock of the Continental Illinois National Bank and Trust Company, received by the Executors during the period of Administration, and a fund of $38,018.84, representing earnings during the same period on that portion of the estate used to pay debts, legacies and other Administration expenses, hereinafter referred to by the Court of Appeals as "administration income," constituted a part of the corpus of the residuary trust created by the will, or constituted "income" distributable to the life beneficiaries of the trust.

It was conceded by all parties that *under the settled rules of law in effect in the District of Columbia at the time the will was executed*, a stock dividend constituted corpus. There was a dispute as to whether or not the so-called "administration income" constituted corpus or income. The Court of Appeals, upon its interpretation of the language of the will, and applicable judicial decisions in effect in this District and in the great majority of states where the question has been adjudicated, held that it constituted corpus.

In reaching the above conclusions, the majority opinion also held that the power given to the Executors and Trustees under paragraph 11 of the will, "to decide finally any *question* that may arise as to what constitutes income and what principal," did not authorize the Executors and Trustees to distribute the stock dividend and fund as income, but that such power was limited and intended to be exercised only in cases where the exact status of an asset was in doubt or had not been determined by judicial decisions, saying (p. 4 of opinion):

> "It (the will) does not empower the trustees to decide what is income and what is principal, but only to decide 'any question' that may arise in that respect.

> Doubtless a question may arise in respect to many items on the borderline, but a 'question' should not and cannot arise except where there is a reasonable doubt. Where, as in the instant case, the exact status of the 'fund' and of the dividend has been determined by judicial decisions, no question can arise because there is no proper place for doubt. To say in such circumstances that the trustees are authorized to assume a doubt where there is none and thus to declare something to be income which under judicial decisions is principal, would open the whole will to such revision and change as they might think wise or desirable."

The dissenting opinion did not differ with the conclusion reached by the majority as to the character of the stock dividend or the "administration income", as determined by judicial decisions applicable in the District of Columbia, but differed from the majority solely with respect to the scope of the power conferred by paragraph 11. The following quotation from the first sentence of the dissenting opinion indicates the subject-matter or point actually discussed by the dissenting Justice (p. 6 of opinion):

> "The question is whether the testatrix intended by Item Eleventh to confer upon her trustees a narrowly limited discretion to decide only unsettled legal questions, or, on the contrary, to give them a broader and more discretionary power which would permit them, to some extent, to distribute as income what would otherwise go as principal and *vice versa*.

ARGUMENT.

Petitioners' Points 1, 2, 3, and 4.

In this case, the Court of Appeals decided a question of local law, purely of local interest, involving the construction of a will of a resident of the District of Columbia.

Petitioners' Points 1, 2 and 3 clearly do not present questions of general importance and are not reviewable by this Court under the provisions of Supreme Court Rule 38(c).

With respect to Petitioners' Point 4, plaintiffs below alleged in their Complaint (R. 7) that the 500 shares of stock in question constituted a stock dividend and this allegation was admitted. The Court of Appeals of the District of Columbia gave full effect to the principle announced in *Gibbons v. Mahon*, 136 U. S. 549, 34 L. Ed. 525, and other more recent decisions of this Honorable Court holding in effect, that *at the time the will became operative, it was settled law in the District of Columbia* that stock dividends constituted corpus. The Court below said:

> "The rule on stock dividends was established long before the transactions now involved."

Therefore, with respect to the stock dividend, the Court of Appeals rightly held that when the testatrix, by the language of her will, directed that "income" should be paid to the life beneficiaries, she intended that they should receive "income" *as defined by the settled law of the District of Columbia in effect at the time the will was executed*, and that the Executors and Trustees were not authorized, under the limited discretionary power given them by paragraph 11 of the will, to distribute the stock dividend as "income" to life beneficiaries of the residuary trust.

The Court of Appeals held with respect to the $38,018.84 of "administration income," that when Testatrix directed that the life beneficiaries should receive the *income from a trust fund consisting of the "rest, residue and remainder" of the decedent's estate*, she did not intend to include therein earnings accrued during the period of administration on that portion of the decedent's gross estate which never formed a part of such "*rest, residue and remainder.*"

CONCLUSION.

It is respectfully submitted that the questions in issue were correctly decided by the Court below. They relate to a matter of local law, involving the construction of a will of a resident of the District of Columbia, and are of *local* and not general importance or public interest, and the Court below relied upon and followed the pertinent decisions of this Honorable Court.

It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

FREDERIC D. MCKENNEY,
JOHN S. FLANNERY,
G. BOWDOIN CRAIGHILL,
JOHN E. LARSON,
Attorneys for Respondent.